

2008 LEGISLATIVE SESSION

Effective date of new legislation July 18, 2008*

*without an emergency clause or operative date within the bill

Bills Passed 2008

LB 280	Allows Juvenile Court to make custody determination for juvenile over whom the court already has jurisdiction.
LB 621	Increases points and fine for speeding over thirty-five miles per hour over the speed limit.
LB 624	Changes penalty provisions for operation of motor vehicle to avoid arrest.
LB 736	Makes impoundment of license followed by use of ignition interlock device part of all DUI convictions. Effective 1-1-09.
LB 764	Makes purposely tripping or causing a horse or cow to fall for entertainment, sport, etc a Class I misdemeanor.
LB 775	Eliminates restriction that deputies of the Clerks of District Court reside in the counties in which they act. Allows appointment of deputies for clerks of county court.
LB 782	Allows disclosure of child abuse or neglect information by HHS under certain circumstances. Approved by the Governor 3-10-2008. Emergency.
LB 823	Provides duties and powers to the Information Technology Commission, including collection of information from agencies relating to information technology projects and determining the format of used for reporting.
LB 844	Makes possession of one ounce or less of marijuana a class III misdemeanor. Requires course on effects of misuse of drugs if the judge determines it in best interest of defendant.
LB 1014	See separate summary on the following page for provisions and effective dates.
LB 1147	Changes Benefit adjustment provisions relating to the Judges Retirement Act.

LB 1014 as Amended

LB 1014 is a collection of legislative amendments with far-reaching implications. In order to help you understand and implement this 100+ page bill, a list of provisions and effective dates is given below. LB 1014's section number, and the statute affected are given in parenthesis following the description. If there are additions or edits to the information provided below, the AOC would appreciate your feedback. Please e-mail Sheryl Connolly sconnolly@nsc.state.ne.us.

Caseload and Scheduling Management: Effective 1-1-09

Allows the use of telephonic or videoconference hearings in non-evidentiary hearings, and in evidentiary hearings, if approved by the court and all parties, provided the method used ensures the preservation of an accurate record and the public's right of access to the courts. **(Section 1: District Court §24-303, Section 12: County Court §25-2704)**

Requires the presiding judges of the district and county courts in each judicial district to review the caseload of the two benches and determine whether to reassign between the courts cases involving domestic relations matters and Class IV felonies. The consent of the parties is not required for reassignment and such cases will remain filed in the court where they were originally filed. **(Section 2: §24-312)**

Requires the mandatory filing of felony and misdemeanor charges in district court when they arise from the same incident. **(Section 4: §24-517(6))**

Amends current statutory language that limits the Supreme Court's ability to fairly compensate retired judges who might be willing to hear court proceedings on a temporary basis **(Section 5: §24-730 [AP1])**

Eliminates provisions requiring contested domestic relations cases being heard by county court judge to be transferred to district court judge upon motion of party. **(Section 14: §25-2740)**

Appeals: Effective 1-1-09

Authorizes the district court to review small claims appeals on the record. Conforms the procedure for admitting the bill of exceptions on appeals from County Court to District Court to that used by the Court of Appeals and Nebraska Supreme Court **(Section 13: §25-2733)**

Conforms the procedure for appealing excessive sentences from County Court to District Court to that followed by the Court of Appeals and Nebraska Supreme Court. **(Section 15: §29-2326)**

Use of Quasi-Judicial Officers: Effective 1-1-09

Allows the court to appoint a referee for any action upon the consent of the parties. **(Section 10: §25-1129)**

Expands the authority of the courts to allow appointment of a referee for any equity matter. (Consent not required.) **(Section 11: §25-1130)**

Expands the authority of county and separate juvenile judges to appoint child support referees. Also expands the authority of all the courts to appoint a child support referee to hear orders issued under 42-924(1) **(Section 49 - 53: §43-1609 – 1613)**

Education for Clerk Magistrates (Originally LB 933): Effective 7-18-08

Removes outdated provisions related to the training of clerk magistrates and clarifies that the Supreme Court has the authority to establish education requirement for clerk magistrates. Removes irrelevant provision reflecting change in title from associate judge to clerk magistrate, which was implemented in 1986. **(Section 3: §24-508)**

Problem Solving Courts (Originally LB 1107): Effective 7-18-08

Adds problem solving court programs to the statutes that codify the drug court programs. Adds provision indicating the intent of Legislature to appropriate funds to Supreme Court for operation of each drug and problem solving court program. **(Section 6: §24-1301; Section 7: §24-1302; Section 18: §29-2246)**

Civil Process (Originally LB 935): Effective 7-18-08

Removes provisions regulating the service and delivery of court papers, including motions, orders, notices, etc, excluding summonses. Adds a provision authorizing the Supreme Court to establish rules regarding service and delivery of court papers, pursuant to the Court's authority to promulgate rules of pleading in civil actions under 25-801.01. **(Section 8: §25-534)**

Service of petition for further review under Administrative Procedure Act is governed by rules of pleading in civil actions promulgated by Supreme Court (Section 69: §84-917)

Allows service upon government entity by handing copy to attorney or party or leaving a copy at their office or house. (Section 70: §86-2,107)

Mediation and ADR in Civil Cases (Originally LB 606): Effective 7-18-08

Provides authority for Nebraska courts to refer civil cases to mediation and other forms of alternative dispute resolution (ADR). Once a case is referred to ADR, the parties may file a motion to object to the referral. Permits an individual trial court, appellate court or the Supreme Court to adopt rules of practice regarding the referral process. **(Section 9: §25-2943)**

Protection Orders (Originally LB 1025): Effective 7-18-08

Requires the court to provide written or oral notification to a defendant convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33) that it may be a

violation of federal law for the individual to possess a firearm or ammunition. Requires AOC to create standard notification and provide a copy to all judges in the state. **(Section 17: §29-2291)**

Amends procedures for the issuance of ex parte orders, including the requirement that if a court issues an ex parte order the court must also immediately schedule an evidentiary hearing **(Section 36: §42-925)**

Changes to the Parenting Act (Originally LB 1085): Effective 4-17-08

Requires a plaintiff living in an undisclosed location (to protect their safety) to provide an alternative address for the mailing of notice. **(Section 29: § 42-353)**

Limits the duration of all ex parte orders under 43-357 to 10 days or until the hearing is held determining the temporary custody of any minor children. **(Section 30: §42-357)**

Requires application for spousal support to be accompanied by a statement of financial condition for applicant and other parties. **(Section 31: §42-359)**

Removes a requirement that the court consider a separate financial plan that would be submitted with the parenting plan when determining child support. Allows admission of school records showing academic progress and attendance as evidence in hearings relating to custody of child. **(Section 32: §42-364)**

Clarifies 42-364 as to what shall be included in a decree for dissolution, legal separation or paternity order regarding various expenses, including: Financial arrangements showing each party's responsibility: medical, dental and eye care, medical reimbursements, day care, extra curricular activities, education and extraordinary expenses of the child; and child support. **(Section 33: §42-364.17)**

Changes references to a child's "birth date" to "year of birth" to protect the child's privacy on support orders. **(Section 34: §42-364.13)**

Allows judgment debtor to file a motion to request releasing or subordination of a lien for a support order. **(Section 35: §42-371)**

Cleans up existing language in statute. (Section 37: §43-247)

Applies Parenting Act to termination of parental rights proceedings arising under sections §43-1401 to §43-1418. (Section 46: §43-1401)

Allows filing of complaint for relief and court order setting aside a judgment, etc., upon genetic test excluding individual as father of child. (Section 47: §43-1412.01)

Requires juvenile and county courts, as well as district courts, to handle establishment, modification and enforcement of child, spousal and medical support in an expeditious manner. **(Section 48: §43-1608) Operative January 1, 2009**

Clarifies definition of “domestic intimate partner abuse” and defines “mediator”. Removes provisions regarding the consideration of the absence or relocation of a party in determining the “best interests of the child”. **(Section 55: § 42-2922)**

Child’s attendance and progress in school shall be included on the list of issues used to determine the Best Interest of the Child. **(Section 56: §43-2923)**

Applies Parenting Act to proceedings or modifications filed on or after January 1, 2008.
(Section 57: §43-2924)

Removes requirement that judges and attorneys involved in parenting act cases participate in training to recognize and handle abuse cases, but retains the requirement that mediators take the training. **(Section 58: §43-2927)**

Removes the authority of the judge to order a child of a party to attend a child of divorce class. **(Section 59: §43-2928)**

A parenting plan must include provisions to assure the child’s attendance and progress in school. **(Section 60 §43-2929)** [AP2]

Requires that each party to a contested proceeding for a temporary order relating to parenting functions offer a “child information affidavit” as an exhibit rather than filing and serving the document. Allows for the optional disclosure of information regarding abuse or conflict in the “child information affidavit”. The AOC shall create a child information affidavit that may be used by the parties. **(Section 61: §42-2932)**

Removes from limits which may be imposed to protect the child or child’s parent the requirement that parent complete an intervention for perpetrators, a program for drug or alcohol abuse or a program designed to correct another factor. **(Section 62: §43-2930)**

Allows court to enter order inconsistent with existing restraining, protection or criminal no-contact orders when court finds such order is required by the best interests of the child.
(Section 63: §43-2934)

Specifies that the parties, guardian ad litem or social services agency can request mediation or Alternate Dispute Resolution in custody, visitation or related matters. **(Section 64 §43-2936)**

In addition to the authority given to courts under the Parenting Act of 2007 to mandate mediation, this section allows courts to order mediation or ADR in cases for which they are not mandatory. Adds “mediator agreed to by the party and approved by the court” as authorized referral by the court, in addition to approved mediation center or court conciliation program. Requires AOC to develop a process to approve mediators. **(Section 65: §43-2937)**

AOC may (not shall) develop rules to implement the Parenting Act. **(Section 66: §43-2943)**

Schools and Foster Care (Originally LB 1159): Effective 7-18-2008 (Unless otherwise specified)

Changes rules of evidence to allow certified copies of school records related to attendance and performance to be admissible in cases where the custody of a child is at issue, or where a GAL has been appointed. **(Section 39: §43-272.01)**

Requires a foster child to attend the same school they attended before entering foster care, unless the court finds it is not in the best interest of the child. **(Section 44: §43-1311)**

The plan established by the court following the initial placement of a child in foster care shall contain the name of the school the child attended prior to placement. **(Section 45: §43-1312)**

Any funds not distributed to counties under the County Juvenile Services Aid Program shall be retained by the commission to be distributed on a competitive basis. **(Section 54: §43-2402)**

Allows certified copies of school records as evidence in proceedings filed under this section. (Section 67 §43-3001)

Child is a resident of the district where he/she lived before entering foster care, unless it is determined that the child will not go to school in the same district, then child is a resident of the district where the foster home is located. (Section 68: §79-215)

Juveniles and Juvenile Court (Originally LB 1160): Effective 7-18-08

Clarifies that juvenile charged in criminal court can make a motion to the court to have his or her case waived down to juvenile court. Allows juvenile to make motion not later than 30 days after arraignment, unless good cause is shown for an extension. Clarifies that the juvenile court has authority over parents of the juvenile that is under the court's jurisdiction. **(Section 16: §29-1816)**

Defines "pre-hearing conference" and "family group conference". Describes the application of privilege and confidentiality to these processes. **(Section 38: §43-247.01)**

Adds to the list of matters that must be considered by the county attorney in deciding where to file and by the judge when considering the transfer of a case down to juvenile court in cases of concurrent jurisdiction, any previous firearm related conviction or acknowledgement of unauthorized use of possession of a firearm and any order declaring the juvenile as not amenable to the rehabilitative treatment of the juvenile court. **(Section 40: §43-276)**

Gives authority to any party to move the juvenile court for a hearing on the amenability of the juvenile to the rehabilitative services available under the juvenile code. Gives juvenile court judges the authority to issue an order, after a hearing on the matter, indicating that a juvenile is not amenable to the rehabilitative treatment of the juvenile court. This order could be used by

the county attorney to show that a repeat juvenile offender should not be transferred down to juvenile court from criminal court. (Section 41: §43- §43-2,106.03)

Adds new Sections 38 and 41 to the juvenile code. (Section 42: §43-2,129)

Child Support (Originally LB 774): Effective 7-1-08

An application to modify child support for an individual jailed for 1 year or more is not required unless incarceration is for criminal non-support. (Section 43: §43-512.15)

Jurors (Originally LB 804): Effective 4-17-08

Jurors are permitted to take notes, which are confidential and destroyed after return of verdict. (Sections 71 and 72:§25-1107.01 and §29-2011)

Legal Education for Public Service Loan Repayment Act (Originally LB 363) (will not affect the courts): Effective 7-18-08

Attorneys employed by non-profit organizations providing legal services to indigent individuals (including prosecutors) can apply for loans to refinance portions of loans for legal education. (Sections 19-28: §7-201 to §7-209 and §29-3927)